IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

OP.No. 10342 of 1997(F)

PETITIONER:

K.P.RAJAN, HEAD OF SECTION,
SREE RAMA POLYTECHNIC, VLAPAD,
THRISSUR DISTRICT.

BY ADV. SRI.C.P.SUDHAKARA PRASAD
SRI.P.N.SANTHOSH

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNENT, GOVERNENT
SECSRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF TECHNICAL EDUCATION,
THIRUVANANTHAPURAM.

BY GOVT PLEADER SMT.SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF LETTER NO.31804/PRC-A3/87/FIN. DT.4.3.87 FROM THE GOVT. TO THE 2ND RESPONDENT.

EXT.P2; TRUE COPY OF LETTER NO.34567/D3/92/H.EDN. DT.17.3.93 FROM THE GOVT. TO THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF ORDER NO.EC3/73671/91 DT.28.5.93 ISSUED BY THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF COMMUNICATION NO.OA(HQ)IV/12-179/93-94/448 DT. 29.12.1993 ISSUED BY THE ACCOUNTANT GENERAL.

EXT.P5: TRUE COPY OF ORDER NO.EC3/39586/94 DT.9.5.1995 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF REPRESENTATION DT.22.6.1995 FILED BY THE PETITIONER BEFORE THE GOVT.

EXT.P7: TRUE COPY OF ORDER G.O.(RT)NO.1342/96/H.EDN. DT.14.11.1996 ISSUED BY THE GOVT.

EXT.P8: TRUE COPY OF JUDGMENT DT.18.12.1996 IN OP NO.19974/96 OF THIS HON'BLE COURT.

EXT.P9: TRUE COPY OF ORDER NO.536/L3/97/H.EDN. DT.22.5.1997 ISSUED BY THE GOVT.

EXT.P10: TRUE COPY OF ORDER NO.EC3/39586/94 DT.4.6.1997 ISSUED BY THE 2ND RESPONDENT.

EXT.P11: TRUE COPY OF ORDER NO.E2-3249/91 DT.15.6.1993 ISSUED BY THE PRINCIPAL, MAHARAJA'S TECHNOLOGICAL INSTITUTE, THRISSUR.

EXT.P12: TRUE COPY OF STATEMENT SHOWING THE DIFFERENCE IN SALARY PREPARED BY THE PETITIONER.

EXT.P13: TRUE COPY OF COMMUNICATION NO.74200/PRC.A1/90/FIN. DATED 27.11.1990 ISSUED BY THE GOVERNENT TO MR.M.ABDUL RAHIM.

EXT.P14: TRUE COPY OF ORDER NO.P2/40119/97 DT.6.1.1998 ISSUED BY THE 2ND RESPONDENT.

EXT.P15: TRUE COPY OF GRATUITY PAYMENT ORDER DATED 1.4.1998 ISSUED FROM THE OFFICE OF THE ACCOUNTANT GENERAL.

EXT.P16: TRUE COPY OF COMMUNICATION NO.P2/40119/97. DT.4.8.1999 ISSUED BY THE D.T.E.

EXT.P17: TRUE COPY OF LIABILITY CERTIFCATE DT.4.8.1999 ISSUED BY THE D.T.E.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.10342 OF 1997

Dated this the 9th day of July, 2007

JUDGMENT

The petitioner was appointed as Draftsman Grade II on 14.8.1967 in the scale of pay of Rs.130-250. He was given the First Higher Grade, on account of stagnation on completion of 14 years of service, on 26.9.1979. He thus came to the scale of pay of Rs.570-1070. Thereafter, on 13.9.1981, he was promoted to the higher cadre of Assistant Lecturer in the scale of pay of Rs.600-1100. This means, by such promotion, he moved to a time scale of pay higher than what was available to him on account of the first higher grade on 26.9.1979. After thus coming to the pay scale of Rs.600-1100 on 13.9.1981, he could not have been treated as stagnated, unless he had worked for the minimum term, to his credit, in that grade, to earn a stagnation higher grade. Otherwise, the concept of stagnation higher grade will be deviated if the petitioner were to be given further higher grade merely reckoning his total length of service from the date

of entry as Draftsman Grade II on 14.8.1967. Yet, on 26.9.1986, reckoning his entire service, he was granted a second higher grade on the basis that he had, to his credit, 20 years of service. He thus came to the scale of pay of Rs.1250-2500, ie., above the time scale of pay of Assistant Lecturer, to which cadre he came only on 13.9.1981.

2. The Accountant General was, therefore, right in taking the objection as evidenced by Ext.P4 that on the basis of Government letter dated 29.11.1990, those who have got one promotion and two grade promotions would not be eligible for a third higher grade on completion of 25 years of service. If the higher grade granted on 26.9.1991, on completion of 25 years, is also to be reckoned, he would get three grade promotions and one regular promotion in the mean while. It is not the scheme of grade promotions.

3. The Government and the petitioner have different contentions referable to Rule 28A and 30 in Part I KSR. Those

rules are irrelevant because grant of higher grade to get over stagnation is a field occupied by Government orders and it is not the provision of the Government Orders that a third higher grade would be available to the person who had enjoyed the regular promotion.

4. For the aforesaid reasons, I do not find any error of jurisdiction or illegality in the objections to the grant of third higher grade recorded in Ext.P4.

5. On to the question whether the petitioner was liable to be ordered to refund the excess pay drawn, the issue stands covered against the petitioner by the decision reported in **Santhakumari** v. **State of Kerala** [2005 (4) KLT 649] and no circumstances have been pointed out in the writ petition to deviate from the application of the said decision to the facts of this case. Since the amount has already been recovered while disbursing the retiral benefits, I find that no directions are

called for as of now. The writ petition fails. The same is accordingly dismissed.

However, it is directed that no interest shall be levied on the refund/recovery on the basis of the overdrawal covered by Ext.P4. All retiral benefits due shall be promptly released subject to the dismissal of the writ petition.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.10342 OF 1997

JUDGMENT

9TH JULY, 2007.

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